

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SEAN SMITH,

Plaintiff,

-against-

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>6-1-11</u>
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09 Civ. 8520 (PKC)

ORDER

THE CITY OF NEW YORK, DETECTIVE K.
KELLY, New York City Police Shield #4465, 6th
Precinct, LIEUTENANT R. WILSON, New York
City Police Department, Shield #4465, 6th
Precinct, NEW YORK CITY POLICE OFFICERS,
John Does One through Five and THE NEW
YORK CITY DEPARTMENT OF
CORRECTIONS,

Defendants.
-----X

P. KEVIN CASTEL, U.S.D.J.

Plaintiff, who was then proceeding pro se, filed the Second Amended Complaint in this action on August 19, 2010. (Docket # 12.) When service was not effected, Magistrate Judge Francis issued a letter dated February 17, 2011, advising the plaintiff to set forth reasons why the action should not be dismissed for failure to comply with Rule 4(m), Fed. R. Civ. P. Having received no response, Magistrate Judge Francis issued a Report and Recommendation (the "R&R") dated March 4, 2011, recommending that the Second Amended Complaint be dismissed with prejudice pursuant to Rule 4(m). (Docket # 15.) The R&R noted that pursuant to 28 U.S.C. § 636(b) and Rules 72, 6(a) and 6(d), Fed. R. Civ. P., the plaintiff had fourteen days to file written objections to the R&R.

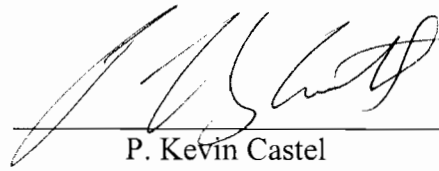
The plaintiff filed no objections to the R&R. In a letter dated March 3, 2011, plaintiff stated to Magistrate Judge Francis that he had retained counsel, who thereafter filed a notice of appearance on March 8. (Docket # 16-17.) Counsel failed to file objections to the R&R, did not

request an extension of time to serve the Second Amended Complaint pursuant to Rule 4(m), Fed. R. Civ. P., and did not seek an extension of time to file objections to the R&R. Rather, counsel simply ignored the R&R, and instead filed a Third Amended Complaint on March 16, 2011. (Docket # 19.)

The filing of a new amended complaint is not a substitute for objecting to the R&R. The R&R expressly apprised the plaintiff of the deadline by which to object. (Docket # 19.) While a pro se party is afforded special solicitude, Lorenz v. Managing Director, St. Luke's Hospital, 2010 WL 4922267, at *12 (S.D.N.Y. Nov. 5, 2010), there is no apparent explanation for counsel's failure to comply with court orders or the Federal Rules of Civil Procedure.

I therefore adopt the R&R in its entirety, and the Second Amended Complaint is dismissed.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
May 31, 2011